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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/518,262

Filing Date: December 16, 2004

Appellant(s): OBERMANN, WOLFGANG JOHANNES

William S. Francos
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 09/02/08 appealing from the Office action mailed 02/11/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows: Claims 1-6 and 20 are the subject of the present Appeal. Claims 1-6 and 20 have been finally rejected.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1,506,139	SEVERSON	08-1924
3,302,286	ZUCKER	02-1967
4,074,427	MARCHETTI et al.	02-1978

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A. Claims 1, 2, 5, 6, and 21 stand rejected under 35 U.S.C. 102(b) as being anticipated by Severson (1,506,139). Regarding claim 1, Severson teaches a hair-cutting apparatus including a cutting arrangement 12, 16 for cutting hair and means 9, 10, 37 for counter-acting flying off cut hair from the hair-cutting apparatus. Severson also teaches that means 9, 10, 37 includes a boundary wall extending close to the cutting arrangement 12, 16. It should be noted that the top portion of the cutter carrying end 7 of the handle 5 and the hood or guard 37 which moves relative to the top portion of the cutter carrying end are considered to be a boundary wall. The boundary wall includes a stationary wall which is the top wall of the cutter carrying portion 7 and the hood 37 is considered to be a movable wall of the boundary wall. Severson also teaches that the boundary wall includes a stationary portion and a portion that is movable relative to the stationary portion. Severson also teaches that the movable portion is being arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of the hair. It should be noted that the movable portion 37 moves back on its pivot against the action of spring 41 when the movable portion is pushed against the hair. Therefore, the movement of the movable portion is according to the nature and condition of the hair. It should be noted that the amount of the movement of the movable portion in Severson's hair-cutting apparatus is at least depends to the thickness of the hair. The thickness of the hair is considered to be the nature of the hair. See Figs. 1-3 and page 2, lines 6-115 in Severson.

Regarding claim 2, Severson teaches everything noted above including that means

9, 10, 37 includes a spring means 40 that cooperates with the movable portion 37 of the boundary wall. Severson also teaches that the spring means 40 spring loads the movable portion 37 in direction of the hair to be cut and wherein the movable portion 37 being movable in opposition to the force exerted by the spring means 40 when cooperating with hair to be cut.

Regarding claim 5, Severson teaches everything noted above including a suction arrangement 9, 10, 37 is provided to suck away cut hair, and the suction arrangement includes a suction passage 9 that is defined by passage walls. Severson also teaches at least some of that passage walls extend close to the cutting arrangement 12, 16 and ends of which situated close to the cutting arrangement define a suction opening through which air be sucked into the suction passage 9. Severson also teaches that the air is sucked into the passage 18 in a direction of suction at a given velocity of flow. Severson also teaches a passage wall is formed by the boundary wall having the stationary portion and the movable portion 37.

Regarding claim 6, Severson teaches everything noted above including that the suction arrangement 9, 10, 37 includes a varier means 37, 40 for varying the velocity of the flow in the region of the suction opening and wherein the varier means 37, 40 are formed by the movable portion 37 of the boundary wall.

Regarding claim 21, Severson teaches everything noted above including a suction arrangement substantially contained in the apparatus. The apparatus has a handle 6 and the suction arrangement is within the handle of the apparatus.

B. Claims 1-3 and 5-6 stand rejected under 35 U.S.C. 102(b) as being anticipated by Zucker (3,302,286). Regarding claim 1, Zucker teaches a hair-cutting apparatus including a cutting arrangement 24 for cutting hair and means 12, 48, 59 for counter-acting flying off cut hair from the hair-cutting apparatus. It should be noted the fitting 48, the comb plate 59, and the portion of frame 12 which is located between the comb plate 59 and the fitting 48 considered to be a means that counter-acting flying off cut hair. The engagement of the comb portion of the comb plate 59 with the scalp 40 lift the plate against the action of spring 68. See Figs. 1-4 and col. 3, lines 43-67 in Zucker. The comb plate 59 which is considered to be the movable portion moves relative to the frame 12 and is arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of the hair. Severson also teaches that means 12, 48, 59 includes a boundary wall extending close to the cutting arrangement 24. It should be noted that the wall defined by the comb plate 59 and the wall defined by the portion of the frame 12 located between the fitting 48 and the comb plate 59 are considered to be a boundary wall. The comb plate 59 is considered to be the movable portion of the boundary wall and the wall of the frame 12 adjacent to the comb plate 59 is considered to be the stationary portion of the boundary wall. Zucker also teaches that the boundary wall includes a stationary portion and a portion 59 movable relative to the stationary portion. Zucker also teaches that the movable portion 59 being arranged and positioned to cooperate with the hair to be cut dependent of the nature and condition of the hair.

Regarding claim 2, Zucker teaches everything noted above including that means 12, 48, 59 includes a spring means 68 that cooperates with the movable portion 59 of the

boundary wall. Zucker also teaches that the spring means 68 spring loads the movable portion 59 in direction of the hair to be cut and wherein the movable portion 59 being movable in opposition to the force exerted by the spring means 68 when cooperating with hair to be cut.

Regarding claim 3, as best understood, Zucker teaches everything noted above that the spring 68 is formed by a rod-type spring that extends substantially transversely to the direction of movement of the movable portion 59 and in a curve or a recess created by the sidewalls of the frame 12. See Fig. 3 in Zucker.

Regarding claim 5, Zucker teaches everything noted above including a suction arrangement is provided to suck away cut hair, and the suction arrangement includes a suction passage that is defined by passage walls. Zucker also teaches at least some of that passage walls extend close to the cutting arrangement 24 and ends of which situated close to the cutting arrangement define a suction opening through which air be sucked into the suction passage. Zucker also teaches that the air is sucked into the passage in a direction of suction at a given velocity of flow. Zucker also teaches a passage wall is formed by the boundary wall having the stationary portion and the

movable portion. It should be noted that the wall portion also is part of the passage wall of the suction 48 that guide the hair into the suction passage of the suction 48. See Fig. 3 in Zucker.

Regarding claim 6, Zucker teaches everything noted above including that the suction arrangement includes a varier means for varying the velocity of the flow in the region of the suction opening and wherein the varier means are formed by the movable portion 59 of the boundary wall.

C. Claims 3 and 4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Severson in view of Marchetti et al. (4,074,427), hereinafter Marchetti. Regarding claim 3, as best understood, Severson teaches everything noted including that the spring 40 is a leaf spring. However, Severson does not explicitly teach that the leaf spring extends substantially transversely to the direction of movement of the movable portion and that extends in a curve. However, the use of a leaf spring extending transversely to the direction of a movable member is well known in the art such as taught by Marchetti. Marchetti teaches a leaf spring 6 that cooperates with a movable member or a guard member 31. The spring loads the movable member in the direction of the hair to be cut. See Figs. 1-7 and col. 3, lines 12-53 in Marchetti. It should be noted that the leaf spring in Severson's apparatus functions the same as the leaf spring in Marchetti's apparatus. It would have been obvious to a person of ordinary skill in the art to replace the leaf spring in Severson's hair cutting apparatus with the leaf spring in Marchetti, since both leaf springs are art-recognized equivalent and function the same. Because these two leaf springs were art-recognized equivalents at the time the

invention was made, one of ordinary skill in the art would have found it obvious to substitute one for another.

Regarding claim 4, Severson, as modified by Marchetti, does not teach explicitly that the leaf spring force lies in a range between 10 mN and 50 mN. However, it appears that the tension force require to extended movable member to its extended position is between 10 mN to 50 mN. In addition, it would have been obvious to a person of ordinary skill in the art to provide a tension force between 10 mN to 50 Nm for the spring in Severson's hair clipper, as modified above, since it is within a person of ordinary skill in the art to choose a specific spring force value that is suitable for biasing a wall member towards a frame. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

D. Claim 4 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Zucker. Zucker teaches everything noted above except that resilient force exerted by the spring means 68 is within 10mN and 50mN. However, Official Notice is taken that used of a rod spring with a resilient force of 10mN and 50mN is well known in the art. In addition, it would have been obvious to a person of ordinary skill in the art to provide a tension force between 10 mN to 50 Nm for the spring in Zucker's hair clipper, since it is within a person of ordinary skill in the art to choose a specific spring force value in the range of 10 mN to 50 mN that biases the movable portion 59 relative to the stationary portion of the boundary wall and according to the scalp contour. See col. 3, lines 60-67 in Zucker. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

(10) Response to Argument

Appellant's arguments that Severson does not teach that movable portion of the boundary wall is arranged to cooperate with the hair to be cut dependent on the nature and condition of the hair is not persuasive. As discussed above, the boundary wall includes a stationary wall which is the top wall of the cutter carrying portion 7 and the hood 37 is considered to be a movable wall of the boundary wall. Severson teaches that the boundary wall includes a stationary portion and a portion that is movable relative to the stationary portion. Severson also teaches that the movable portion is being arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of the hair. It should be noted that the movable portion 37 moves back on its pivot against the action of spring 41 when the movable portion is pushed against the hair. Therefore, the movement of the movable portion is according to the nature and condition of the hair. See Figs. See Figs. 1-3 and page 2, lines 6-115 in Severson. This nature and condition could be the thickness of the hair. In other words, the movement of the movable portion is according to the thickness of the hair to be cut. If the hair to be cut is thicker, the movable portion is pushed backward in a distance that is larger than the distance that the movable portion is pushed backward while is pushed against a thinner hair. In addition, the movable portion is pushed backward according to the curvature of the hair. The nature of the hair to be cut directly controls the distance that the movable portion is pushed backward, since movable portion is pushed against the hair to be cut. At least the softness, rigidity, and thickness of the hair to be cut are factors that determines the distance that the movable portion is pushed backward while is pushed against

the hair. The same argument is true with respect to the movable portion of Zucker's hair-cutting apparatus.

Appellant's argument that the hood or cover 37 and its spring 40 in Severson are provided to regulate suction, and are not arranged to cooperate with the hair to be cut dependent of the nature and condition of the hair is not persuasive. Firstly, the cover 37 as regulates the suction also cooperates with the cutting head of the hair clipper to cut the hair to be cut. Secondly, the regulation of the suction or position of the cover 37 with respect to the cutting head of the hair clipper depends on the nature of the hair. The cover 37 is positioned relative to the cutting head according to at least the thickness or length of the hair to be cut. Thicker or rigid hair prevents the cover to contact the skull or get closer to the skull in contract to the thinner hair. Therefore, the cover controls the amount and the length of the hair positioned adjacent the hair clipper head and cooperates with the cutting head to cut the hair to be cut dependent on the thickness or nature and condition of the hair. It should be noted that the claim do not specify what is considered to be the nature and condition of the hair. It is not clear what encompasses "the nature and condition of the hair." In addition, claims do not specify how the particular nature and condition of the hair could cooperate with the movable portion to cut the hair. It is not clear how the movable portion and the stationary portion of the means for counter-acting flying off cut hair from the hair cutting-apparatus of the instant application work different that the cited prior art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3724

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ghassem Alie/

Primary Examiner, Art Unit 3724

11/20/08

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SPRE, TC 3700